



Substitute Senate Bill No. 710

Public Act No. 09-70

AN ACT CONCERNING UPDATES TO THE FAMILY AND MEDICAL LEAVE ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 31-51ll of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) (1) Subject to section 31-51mm, as amended by this act, an eligible employee shall be entitled to a total of sixteen workweeks of leave during any twenty-four-month period, such twenty-four-month period to be determined utilizing any one of the following methods: (A) Consecutive calendar years; (B) any fixed twenty-four-month period, such as two consecutive fiscal years or a twenty-four-month period measured forward from an employee's first date of employment; (C) a twenty-four-month period measured forward from an employee's first day of leave taken under sections 31-51kk to 31-51qq, inclusive, as amended by this act; or (D) a rolling twenty-four-month period measured backward from an employee's first day of leave taken under sections 31-51kk to 31-51qq, inclusive, as amended by this act.

(2) Leave under this subsection may be taken for one or more of the following reasons:

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(A) Upon the birth of a son or daughter of the employee;

(B) Upon the placement of a son or daughter with the employee for adoption or foster care;

(C) In order to care for the spouse, or a son, daughter or parent of the employee, if such spouse, son, daughter or parent has a serious health condition;

(D) Because of a serious health condition of the employee; or

(E) In order to serve as an organ or bone marrow donor.

(b) Entitlement to leave under subparagraph (A) or (B) of subdivision (2) of subsection (a) of this section may accrue prior to the birth or placement of a son or daughter when such leave is required because of such impending birth or placement.

(c) (1) Leave under subparagraph (A) or (B) of subdivision (2) of subsection (a) of this section for the birth or placement of a son or daughter may not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer agree otherwise. Subject to subdivision (2) of this subsection concerning an alternative position, subdivision (2) of subsection (f) of this section concerning the duties of the employee and subdivision (5) of subsection (b) of section 31-51mm, as amended by this act, concerning sufficient certification, leave under subparagraph (C) or (D) of subdivision (2) of subsection (a) or under subsection (i) of this section for a serious health condition may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this subsection shall not result in a reduction of the total amount of leave to which the employee is entitled under subsection (a) of this section beyond the amount of leave actually taken.

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(2) If an employee requests intermittent leave or leave on a reduced leave schedule under subparagraph (C), (D) or (E) of subdivision (2) of subsection (a) or under subsection (i) of this section that is foreseeable based on planned medical treatment, the employer may require the employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that (A) has equivalent pay and benefits, and (B) better accommodates recurring periods of leave than the regular employment position of the employee, provided the exercise of this authority shall not conflict with any provision of a collective bargaining agreement between such employer and a labor organization which is the collective bargaining representative of the unit of which the employee is a part.

(d) Except as provided in subsection (e) of this section, leave granted under subsection (a) of this section may consist of unpaid leave.

(e) (1) If an employer provides paid leave for fewer than sixteen workweeks, the additional weeks of leave necessary to attain the sixteen workweeks of leave required under sections 5-248a, as amended by this act, and 31-51kk to 31-51qq, inclusive, as amended by this act, may be provided without compensation.

(2) (A) An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave or family leave of the employee for leave provided under subparagraph (A), (B) or (C) of subdivision (2) of subsection (a) of this section for any part of [this] the sixteen-week period of such leave under said subsection or under subsection (i) of this section for any part of the twenty-six-week period of such leave.

(B) An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave

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provided under subparagraph (C), (D) or (E) of subdivision (2) of subsection (a) of this section for any part of the sixteen-week period of such leave under said subsection or under subsection (i) of this section for any part of the twenty-six-week period of leave, except that nothing in section 5-248a, as amended by this act, or sections 31-51kk to 31-51qq, inclusive, as amended by this act, shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(f) (1) In any case in which the necessity for leave under subparagraph (A) or (B) of subdivision (2) of subsection (a) of this section is foreseeable based on an expected birth or placement of a son or daughter, the employee shall provide the employer with not less than thirty days' notice, before the date of the leave is to begin, of the employee's intention to take leave under said subparagraph (A) or (B), except that if the date of the birth or placement of a son or daughter requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.

(2) In any case in which the necessity for leave under subparagraph (C), (D) or (E) of subdivision (2) of subsection (a) or under subsection (i) of this section is foreseeable based on planned medical treatment, the employee (A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse or parent of the employee, as appropriate; and (B) shall provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave under said subparagraph (C), (D) or (E), except that if the date of the treatment requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.

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(g) In any case in which a husband and wife entitled to leave under subsection (a) of this section are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to sixteen workweeks during any twenty-four-month period, if such leave is taken: (1) Under subparagraph (A) or (B) of subdivision (2) of subsection (a) of this section; or (2) to care for a sick parent under subparagraph (C) of said subdivision. In any case in which a husband and wife entitled to leave under subsection (i) of this section are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to twenty-six workweeks during any twelve-month period.

(h) Unpaid leave taken pursuant to sections 5-248a, as amended by this act, and 31-51kk to 31-51qq, inclusive, as amended by this act, shall not be construed to affect an employee's qualification for exemption under chapter 558.

(i) Subject to section 31-51mm, as amended by this act, an eligible employee who is the spouse, son or daughter, parent, or next of kin of a current member of the armed forces, as defined in section 27-103, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or is on the temporary disability retired list for a serious injury or illness incurred in the line of duty, shall be entitled to a one-time benefit of twenty-six workweeks of leave during any twelve-month period for each armed forces member per serious injury or illness incurred in the line of duty. Such twelve-month period shall commence on an employee's first day of leave taken to care for a covered armed forces member and end on the date twelve months after such first day of leave. For the purposes of this subsection, (1) "next of kin" means the armed forces member's nearest blood relative, other than the covered armed forces member's spouse, parent, son or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the armed forces member by court

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decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered armed forces member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave, in which case the designated individual shall be deemed to be the covered armed forces member's next of kin; and (2) "son or daughter" means a biological, adopted, foster child, stepchild, legal ward or a child for whom the eligible employee or armed forces member stood in loco parentis and who is any age.

(j) Leave taken pursuant to sections 31-51kk to 31-51qq, inclusive, as amended by this act, shall not run concurrent with the provisions of section 31-313.

[(i)] (k) Notwithstanding the provisions of sections 5-248a, as amended by this act, and 31-51kk to 31-51qq, inclusive, as amended by this act, all further rights granted by federal law shall remain in effect.

Sec. 2. Section 31-51mm of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) An employer may require that request for leave based on a serious health condition in subparagraph (C) or (D) of subdivision (2) of subsection (a) of section 31-51ll, as amended by this act, or leave based on subsection (i) of section 31-51ll, as amended by this act, be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, ~~or~~ parent or next of kin of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.

(b) Certification provided under subsection (a) of this section shall be sufficient if it states:

(1) The date on which the serious health condition commenced;

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(2) The probable duration of the condition;

(3) The appropriate medical facts within the knowledge of the health care provider regarding the condition;

(4) (A) For purposes of leave under subparagraph (C) of subdivision (2) of subsection (a) of section 31-51ll, as amended by this act, a statement that the eligible employee is needed to care for the son, daughter, spouse or parent and an estimate of the amount of time that such employee needs to care for the son, daughter, spouse, [or] parent or next of kin; and (B) for purposes of leave under subparagraph (D) of subdivision (2) of subsection (a) of section 31-51ll, as amended by this act, a statement that the employee is unable to perform the functions of the position of the employee;

(5) In the case of certification for intermittent leave or leave on a reduced leave schedule for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;

(6) In the case of certification for intermittent leave or leave on a reduced leave schedule under subparagraph (D) of subdivision (2) of subsection (a) of section 31-51ll, as amended by this act, a statement of the medical necessity of the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; [and]

(7) In the case of certification for intermittent leave or leave on a reduced leave schedule under subparagraph (C) of subdivision (2) of subsection (a) of section 31-51ll, as amended by this act, a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent

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leave or reduced leave schedule; and

(8) In the case of certification for intermittent leave or leave on a reduced leave schedule under subsection (i) of section 31-51ll, as amended by this act, a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the spouse, son or daughter, parent or next of kin who is a current member of the armed forces, as defined in section 27-103, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or is on the temporary disability retired list, for a serious injury or illness incurred in the line of duty, and the expected duration and schedule of the intermittent leave or reduced leave schedule. For the purposes of this subsection, "son or daughter" and "next of kin" shall have the same meaning as in subsection (i) of section 31-51ll, as amended by this act.

(c) (1) In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a) of this section for leave under subparagraph (C) or (D) of subdivision (2) of subsection (a) or under subsection (i) of section 31-51ll, as amended by this act, the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b) of this section for such leave.

(2) A health care provider designated or approved under subdivision (1) of this subsection shall not be employed on a regular basis by the employer.

(d) (1) In any case in which the second opinion described in subsection (c) of this section differs from the opinion in the original certification provided under subsection (a) of this section, the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated

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or approved jointly by the employer and the employee concerning the information certified under subsection (b) of this section.

(2) The opinion of the third health care provider concerning the information certified under subsection (b) of this section shall be considered to be final and shall be binding on the employer and the employee.

(e) The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis, provided the standards for determining what constitutes a reasonable basis for recertification may be governed by a collective bargaining agreement between such employer and a labor organization which is the collective bargaining representative of the unit of which the worker is a part if such a collective bargaining agreement is in effect. Unless otherwise required by the employee's health care provider, the employer may not require recertification more than once during a thirty-day period and, in any case, may not unreasonably require recertification. The employer shall pay for any recertification that is not covered by the employee's health insurance.

Sec. 3. Section 5-248a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) For purposes of this section, "child" means a biological, adopted or foster child, stepchild, child of whom a person has legal guardianship or custody, or, in the alternative, a child of a person standing in loco parentis, who is (1) under eighteen years of age, or (2) eighteen years of age or older and incapable of self-care because of a mental or physical disability. Each permanent employee, as defined in subdivision (20) of section 5-196, shall be entitled to a family leave of absence upon the birth or adoption of a child of such employee, or upon the serious illness of a child, spouse or parent of such employee; and a medical leave of absence upon the serious illness of such

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employee or in order for such employee to serve as an organ or bone marrow donor. The total amount of time that an employee is entitled to for leaves of absence pursuant to this section shall be twenty-four weeks within any two-year period. Any such leave of absence shall be without pay. Upon the expiration of any such leave of absence, the employee shall be entitled (A) to return to the employee's original job from which the leave of absence was provided or, if not available, to an equivalent position with equivalent pay, except that in the case of a medical leave, if the employee is medically unable to perform the employee's original job upon the expiration of such leave, the Personnel Division of the Department of Administrative Services shall endeavor to find other suitable work for such employee in state service, and (B) to all accumulated seniority, retirement, fringe benefit and other service credits the employee had at the commencement of such leave. Such service credits shall not accrue during the period of the leave of absence.

(b) The leave of absence benefits granted by this section shall be in addition to any other paid leave benefits and benefits provided under subdivision (7) of subsection (a) of section 46a-60 which are otherwise available to the employee.

(c) Any permanent employee who requests a medical leave of absence due to the employee's serious illness or a family leave of absence due to the serious illness of a child, spouse or parent pursuant to subsection (a) of this section or a military caregiver leave of absence pursuant to subsection (g) of this section shall be required by the employee's appointing authority, prior to the inception of such leave, to provide sufficient written certification from the physician of such employee, child, spouse, [or] parent or next of kin of the employee, as appropriate, of the nature of such illness and its probable duration. For the purposes of this section, "serious illness" means an illness, injury, impairment or physical or mental condition that involves (1) inpatient

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care in a hospital, hospice or residential care facility, or (2) continuing treatment or continuing supervision by a health care provider.

(d) Any permanent employee who requests a medical leave of absence in order to serve as an organ or bone marrow donor pursuant to subsection (a) of this section shall be required by the employee's appointing authority, prior to the inception of such leave, to provide sufficient written certification from the physician of such employee of the proposed organ or bone marrow donation and the probable duration of the employee's recovery period from such donation.

(e) Any permanent employee who requests a family leave of absence pursuant to subsection (a) of this section or a military caregiver leave of absence pursuant to subsection (g) of this section shall submit to the employee's appointing authority, prior to the inception of such leave, a signed statement of the employee's intent to return to the employee's position in state service upon the termination of such leave.

(f) Notwithstanding the provisions of subsection (b) of section 38a-554, the state shall pay for the continuation of health insurance benefits for the employee during any leave of absence taken pursuant to this section. In order to continue any other health insurance coverages during such leave, the employee shall contribute that portion of the premium the employee would have been required to contribute had the employee remained an active employee during the leave period.

(g) Each permanent employee, as defined in subdivision (20) of section 5-196, who is the spouse, son or daughter, parent or next of kin of a current member of the armed forces, as defined in section 27-103, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or is on the temporary disability retired list for a serious injury or illness incurred in the line of duty, shall be entitled to a one-time benefit of twenty-six workweeks of leave within

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a single two-year period for each armed forces member per serious injury or illness incurred in the line of duty.

(h) For purposes of subsection (g) of this section, (1) "next of kin" means the armed forces member's nearest blood relative, other than the covered armed forces member's spouse, parent, son or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the armed forces member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered armed forces member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave, in which case the designated individual shall be deemed to be the covered armed forces member's next of kin; and (2) "son or daughter" means a biological, adopted, foster child, stepchild, legal ward or a child for whom the eligible employee or armed forces member stood in loco parentis and who is any age.

Approved May 27, 2009